

UNITED STATES DISTRICT COURT
for the
Southern District of Indiana

United States of America

v.

JUAN LUIS MONTOYA-PEGO

)

) Case No: 2:12-CR-00015-JMS-CMM-01

)

) USM No: 43871-039

Date of Original Judgment:

11/05/2012

)

Date of Previous Amended Judgment:

(Use Date of Last Amended Judgment if Any)

)

) Michael J. Donahoe (previous)

Defendant's Attorney

**ORDER REGARDING MOTION FOR SENTENCE REDUCTION
PURSUANT TO 18 U.S.C. § 3582(c)(2)**

Upon motion of the defendant the Director of the Bureau of Prisons the court under 18 U.S.C. § 3582(c)(2) for a reduction in the term of imprisonment imposed based on a guideline sentencing range that has subsequently been lowered and made retroactive by the United States Sentencing Commission pursuant to 28 U.S.C. § 994(u), and having considered such motion, and taking into account the policy statement set forth at USSG §1B1.10 and the sentencing factors set forth in 18 U.S.C. § 3553(a), to the extent that they are applicable,

IT IS ORDERED that the motion is:

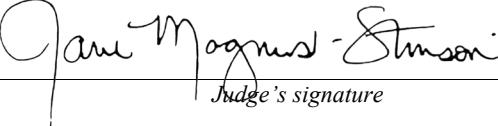
DENIED. GRANTED and the defendant's previously imposed sentence of imprisonment (*as reflected in the last judgment issued*) of _____ months **is reduced to** _____.

(See Page 2 for additional parts. Complete Parts I and II of Page 2 when motion is granted)

Except as otherwise provided, all provisions of the judgment dated _____ shall remain in effect.

IT IS SO ORDERED.

Order Date: 05/31/2024


Jane Magnus-Stinson
Judge's signature

Effective Date:

(if different from order date)

Printed name and title

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

UNITED STATES OF AMERICA,)
)
)
Plaintiff,)
)
v.) 2:12-cr-00015-JMS-CMM
)
)
JUAN LUIS MONTOYA-PEGO (01),)
)
)
Defendant.)

ORDER DENYING MOTION TO REDUCE SENTENCE

Defendant Juan Luis Montoya-Pego (01) has filed Motion to Reduce Sentence based on USSC Amendment 821.[30].¹ Mr. Montoya-Pego was convicted of possession of a prohibited object in prison. [28]. He received a sentence of 27 months. [Id]. He seeks a relief under Amendment 821, "seeking a 2-point reduction due to falling within the acceptable criteria." [30]. The Government has filed a Response in Opposition in which it asserts that Mr. Montoya-Pego is ineligible for any reduction because the amendment does not apply to him [37].

The Court has authority to modify a previously imposed sentence pursuant to 18 U.S.C. § 3582(c)(2), if the defendant's guideline range has been lowered subsequent to his sentencing by an act of the United States Sentencing Commission. In determining whether a defendant is eligible for such relief, district courts are to employ a two-step analysis. See Dillon v. United States, 560 U.S. 817, 826, 130 S. Ct. 2683, 177 L. Ed. 2d 271 (2010). At step one, the Court is to determine whether the defendant is eligible for resentencing and the extent of the reduction authorized. Id. at

¹ The Court appointed the Indiana Federal Community Defender to represent Mr. Montoya-Pego. [31]. Counsel was later granted leave to withdraw. [34]. Mr. Montoya-Pego was afforded an opportunity to supplement his petition following the withdrawal [35], but he did not.

827. In making this determination the Court must heed the binding instructions of the Sentencing Commission codified at U.S.S.G. § 1B1.10. *Id.* at 828-29. If the defendant is eligible for a reduction, the Court advances to the second step. At the second step, the Court considers any applicable § 3553(a) factors and determines whether, in the Court's discretion, the authorized reduction is warranted in whole or in part under the particular circumstances of the case. *Id.* at 827.

Beginning and ending with the step one analysis under Dillon, the Court agrees with the United States that Mr. Montoya-Pego is ineligible for resentencing. As to the step one analysis under Dillon, the Court agrees with the United States that Mr. Montoya-Pego is ineligible for resentencing as his original Guidelines range was not lowered by a subsequent act of the Sentencing Commission. The amended provision provides: "Add 1 point if the defendant (1) receives 7 or more points under subsections (a) through (d), and (2) committed the instant offense while under any criminal justice sentence, including probation, parole, supervised release, imprisonment, work release, or escape status." U.S.S.G. § 4A1.1(e). While indeed this amendment applies to Mr. Montoya-Pego, and he would now receive 1status point instead of 2, the result is a total of 16 criminal history points instead of 17. See U.S.S.G. § 4A1.1(e). The reduction results in no change to Mr. Montoya-Pego's Criminal History Category which remains VI, as Criminal History Category VI applies to anyone with 13 or more criminal history points. Because Mr. Montoya-Pego's guideline range would not change, he is not entitled to a sentence reduction. See § 3582(c)(2); § 1B1.10(a)(2)(B).

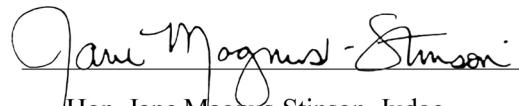
The Part B to Amendment 821 provides an offense level reduction for offenders who have zero criminal history points. But, as noted, Mr. Montoya-Pego has 16 criminal history points, so Part B does not apply to him. The Court therefore does not proceed to step two under *Dillon*.

For the foregoing reasons, Mr. Montoya-Pego's Motion to Reduce Sentence [30] is

DENIED.

IT IS SO ORDERED.

Date: 5/31/2024



Hon. Jane Magnus-Stinson, Judge
United States District Court
Southern District of Indiana

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